

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A73 664 543 - Vermont Service Center Date: JUN 17 1996

In re: DAHIR NUR HERSI, Beneficiary of visa petition filed by
ABDULLAHI A. NUR, Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF SERVICE: Thomas K. Ware
Service Center Counsel

APPLICATION: Petition to classify status of alien relative for
issuance of immigrant visa

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The petitioner has appealed from a decision of the Regional Service Center director dated December 15, 1995, denying the visa petition filed on the beneficiary's behalf as the petitioner's stepfather under section 201(b) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b). The record will be remanded.

On August 31, 1995, the petitioner, a native of Somalia and a naturalized citizen of the United States, filed a visa petition on the beneficiary's behalf as his stepfather. On November 8, 1995, the Service asked the petitioner for additional information which includes, among other documents, the petitioner's birth certificate showing his claimed mother-child relationship to the beneficiary's wife, and the beneficiary's marriage certificate to the beneficiary's mother. The petitioner was specifically requested that the documents to be submitted, namely his birth certificate and the beneficiary's marriage certificate, be issued by the appropriate Somalian civil authority. In response to this request, the petitioner submitted affidavits from two relatives attesting that the petitioner was born to Salada Samatar on December 15, 1945, and in 1946, after the death of the petitioner's biological father, the beneficiary married the petitioner's mother, Salada Samatar.

In denying the visa petition, the RSC director indicated that the petitioner had not submitted the requested documents and concluded that the evidence submitted in the forms of affidavits failed to establish the claimed relationship. The beneficiary does not, therefore, qualify as the petitioner's stepfather for immigration purposes.

On appeal, the petitioner states that he cannot obtain from Somalia his birth certificate and the beneficiary's marriage certificate because "there is no government in Somalia from December 1990 to present time."

8 C.F.R. § 204.2(c)(2)(v) provides that "When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence."

The Department of State's Foreign Affairs Manual (FAM) shows that "there are no civil records available in Somalia. Any official Somali document that is dated after December 1990 and issued in Mogadishu should be considered fraudulent. There are no circumstances under which Somalian immigrant visa applications can reasonably be expected to recover original documents held by the former Government of Somalia."

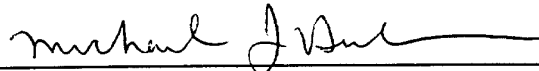
In this case, the petitioner states that he was born in 1945 in Somalia and that his mother married the beneficiary in 1946, in Somalia. The petitioner acted in good faith and with diligence in the presentation of affidavits as secondary evidence to the Service. He has also explained why he could not obtain the requested official civil records from Somalia.

We are satisfied from our review of the record that the petitioner cannot reasonably be expected to provide the required official civil records in the forms of original documents issued by the Somalian civil authority, as instructed in the November 8, 1995, Service's notice. We further note that given the fact that the FAM shows that the official civil records as primary supporting documents are unavailable in Somalia, the petitioner may not be required to submit a letter of non availability from a Somalian registrar before the Service would accept secondary evidence submitted by the petitioner in support of his visa petition. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may take the form of historical evidence. Affidavits and blood tests may also be accepted. For the foregoing reasons, we conclude that a remand is necessary.

On remand, the petitioner will be given an opportunity to submit any other documents he may wish. The RSC director will then reconsider the case and render a new decision in accordance with the foregoing opinion and with Matter of To, 14 I&N Dec. 679 (BIA 1974).

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ORDER: The record is remanded to the Regional Service Center director for further proceedings consistent with the foregoing opinion and the entry of a new decision.

A handwritten signature in dark ink, appearing to read "Michael J. Dineen", is written over a horizontal line.

FOR THE BOARD